lists" were developed. These lists were the ESPs' own expressions of the unbundled features or functions from which they would like to be able to "pick and choose" to design and develop their services.

In response to this input, the BOCs unbundled numerous existing services and negotiated with vendors for development of many more. Additionally, those that were not initially made available have remained on the list and continue to be made available as they become technologically and economically feasible. As the Commission observed in the Notice, ESPs can now pick and choose from over 150 ONA network services provided by one or more BOCs to fashion their individualized enhanced service offerings.[22] The availability alone of this wide assortment of network features, relatively few of which are used by the BOCs' own enhanced service operations, is clear evidence that the BOCs have not engaged in providing discriminatory access to the network.

Of course, ESPs are not limited to picking and choosing services from this array. ESPs have the latitude and opportunity to identify desired network capabilities that would be useful to their operations and to submit requests to the BOCs to have those capabilities developed. Under the Commission's 120-day request review requirement, BOCs must analyze an ESP's request under the ONA service selection

---

[22] Notice at ¶ 19.

criteria established by the Commission and respond to the ESP whether the service can be provided as requested.

Dissatisfied ESPs may petition the Commission for a declaratory ruling if they find a BOC's response unsatisfactory. As the Commission noted, no such petitions have been filed.[23] The obvious reason for this is that the process works.

BellSouth's experience supports this conclusion. From 1992 through 1994, BellSouth received 55 requests for services through its "ESP outreach" program, which solicits such requests. Of those 55, BellSouth was able to fully satisfy 44 (80%) with existing tariffed offerings, with new capabilities, or with other solutions. Thus, BellSouth's experience shows that ESPs do have, and are using and benefitting from, the opportunity presented by the 120-day process to pick and choose network service offerings.

Further, to the extent the Ninth Circuit's decision suggests that access discrimination occurs because the BOCs' have an opportunity to pick and choose network services that are not available to others, the suggestion is off the mark.[24] The 120-day process is a nondiscriminatory

---

[23] Notice at ¶ 21.

[24] To the extent the opportunity to pick and choose network services may be read broadly by some as a euphemism for "fundamental unbundling", they should be reminded that "fundamental unbundling" is no more available to the BOCs' enhanced service operations than it is to nonaffiliated parties. Thus, the unavailability of "fundamental (continued...)

opportunity. BellSouth's own enhanced service operations must submit a request through this process if they identify currently unavailable features they would like to have analyzed for development. All requests are handled in confidence, with information that would identify the requesting entity stripped from the request.

The Commission also properly recognized the opportunity ESPs have to pursue network service design on a *grander* scale through the IILC. This forum brings together resources and participants from a broad base of industry segments: local exchange carriers (BOCs and independents), interexchange carriers, ESPs, manufacturers, wireless service providers, consultants, and others. Through consensus building processes, the IILC analyzes the technical feasibility of new feature requests and makes recommendations for implementation of those features. As the Commission observed in the Notice, a number of new services have been implemented as a result of this process.[25] The BOCs annual ONA reports also indicate additional services that are likely to become available in the near term as a result of these processes. The IILC thus provides another viable mechanism for ESPs to utilize in

---

[24](...continued)
unbundling" to nonaffiliated ESPs cannot be said to be a discriminatory circumstance.

[25] Notice at ¶ 22.

obtaining functionality needed to support their enhanced service offerings.

In addition to these formalized processes, the BOCs have labored under an ongoing obligation to include ONA concepts in their planning for deployment of new technologies, such as SS7, ISDN, and intelligent networks. Moreover, the BOCs have reported annually on the progress they have made in deploying these technologies.

As BellSouth's annual reports show, deployment of these technologies has allowed BellSouth to continue to provide new ONA services. BellSouth has now deployed SS7 infrastructure throughout its nine state territory. Consequently, BellSouth has been able to meet six ESP requested capabilities via use of this technology. In its 1993 reports, BellSouth indicated its plans to begin tariffing basic rate ISDN service for residential and business applications. Today, these basic rate ISDN services are tariffed in all nine BellSouth States. BellSouth's reports have also identified a number of new services dependent on AIN technology that BellSouth plans to make available to third parties and end-users. Development of these technologies thus continues to provide ESPs expanding opportunities to pick and choose network services to meet their needs.[26]

---

[26] BellSouth's annual reports also show expanding deployment of ONA services based on traditional (continued...)

Additionally, the Commission has inquired how other proceedings it has initiated bear on the unbundling and access discrimination issues upon which the Ninth Circuit focused. For example, the Commission requested comments on the degree to which the unbundling contemplated in the Intelligent Networks[27] proceeding would contribute to reducing hypothetical access discrimination.[28]

As BellSouth has previously reported to the Commission, it is making significant strides in developing an open access arrangement to its advanced intelligent network (AIN) capabilities.[29] BellSouth is working diligently to meet its announced plan to introduce AIN service creation opportunities through service management system access this year. As the Commission observed, this form of mediated access to the AIN would expand ESPs' abilities to develop customized services for their end users.

---

[26](...continued) technologies. For example, in its 1993 report, 65% of ONA services were more than 90% deployed. In its 1994 report, 77% of the ONA services were more than 90% deployed. A single service example is the increase in deployment for Call Forwarding Don't Answer After Call Waiting. The actual deployment for this service was 52.23% in 1992. BellSouth's 1995 annual report will reflect an actual deployment of 92.54% for 1994.

[27] Intelligent Networks, Notice of Proposed Rulemaking, 8 FCC Rcd 6813 (1993).

[28] Notice at ¶ 31.

[29] See, e.g., Intelligent Networks, CC Docket No. 91-346, Supplemental Comments of BellSouth Telecommunications, Inc. (filed July 7, 1993).

The availability of such an access arrangement also will provide two natural safeguards against perceived discrimination. First, by giving the ESP greater flexibility in designing and deploying its services, BellSouth removes itself from involvement in the service evaluation and creation process. Thus, service creation control shifts out of BellSouth' hands into the hands of the ESP and thereby eliminates opportunities for discrimination.

Second, by putting more service creation capability and responsibility in the ESP's hands, much of the business risk of new service introduction stays with the ESP where it belongs, rather than falling on the BOC. Thus, by making the underlying functionality available to ESPs while keeping the risk of new service development with the ESP, BellSouth may become less dependent on economic or technical evaluation criteria associated with ESPs' innovative service plans. This improved allocation of risk will thereby minimize or eliminate ESPs' ability to assert that a BOC has improperly denied a new service request for lack of market demand or other criteria. Instead, the ESP will properly bear the risk of a failed service offering or the cost of developing an offering with only narrow market appeal. Development of access to the AIN in this manner thereby can contribute to prevention of the perception of access discrimination that some may assert exists in current service request review processes.[30]

The Commission also inquired whether the requirement adopted in the Expanded Interconnection[31] proceeding that BOCs allow third parties, including ESPs, to interconnect their trunks to BOC switches achieves some of the goals "understood" as fundamental unbundling in the Computer III proceeding.[32] Responding to this inquiry is made difficult because it presumes that there was a consensus understanding of the concept of "fundamental unbundling" at the time of the Computer III proceeding. In truth, however, the phrase

---

[30] That such mediated access to AIN functionality can mitigate perceived access discrimination should not be construed as reason to mandate such an arrangement. As BellSouth has made clear, an AIN access arrangement imposed by regulatory fiat will not lead to opportunities ESPs desire. Market forces are a more efficient driver of the flexibility and utility the AIN can offer.

[31] Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) (Special Access Interconnection Order), recon., 8 FCC Rcd 1217 (1992), further recon., 8 FCC Rcd 7341 (1993), vacated in part and remanded sub nom. Bell Atlantic Telephone Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994); Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (Switched Transport Expanded Interconnection Order), pet. for review pending sub nom. Bell Atlantic v. FCC, No. 93-1743 (D.C. Cir., filed Nov. 12, 1993); Expanded Interconnection with Local Telephone Company Facilities, Transport Phase II, Third Report and Order, 9 FCC Rcd 2718 (1994) (Tandem Signalling Interconnection Order); see also Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, FCC 94-190, 9 FCC Rcd 5154 (1994), appeal docketed sub nom. Southwestern Bell Telephone Co. v. FCC, No. 94-1547 (D.C. Cir. Aug. 10, 1994).

[32] Notice at ¶ 30.

"fundamental unbundling" was not used by the Commission until its first order on the BOCs' ONA plans. And then, the phrase was only used in a relative sense, comparing the degree of unbundling under the common ONA model to a potentially greater, but unspecified, degree of unbundling that was only "more" fundamental.[33] "Fundamental unbundling" was never used in the Computer III or ONA proceedings to reflect an agreed upon and generally understood unbundling standard.

Nonetheless, the Expanded Interconnection proceeding has resulted in a greater degree of network unbundling of which ESPs are among the beneficiaries. Just as any other customer, ESPs may order the BOCs' virtual collocation services or, alternatively, may order special access services from competing access service providers. Thus, ESPs are now afforded "the kind of fundamental unbundling" that would allow them to connect their trunks to BOC switches. To that end, the Expanded Interconnection proceeding has achieved much of what appears to have been contemplated under the rubric of "fundamental unbundling."

C. ONA Amendments

In contrast with the foregoing conditions that facilitate and support nonaffiliated ESPs' opportunities to "pick and choose" the services they need to support their

---

[33] See, e.g., BOC ONA Order, 4 FCC Rcd 1, at para. 70 (1988).

enhanced service offerings, other requirements of the Commission hamstring the BOCs' efforts to rapidly develop and deploy their own enhanced services. Chief among these restraints is the requirement that the BOCs submit amendments to their ONA plans when they anticipate offering an enhanced service that will utilize an underlying basic service that has not previously been identified in the ONA plan. While the requirement appears reasonable on paper, its effect has been demonstrated to be an unreasonable delay on new service introduction.

For example, the regulatory ordeal experienced by Bell Atlantic in trying to amend its ONA plan by including an upgraded (interoffice) version of a service already available on a limited (intraoffice) basis is well documented. Bell Atlantic originally filed its amendment on April 18, 1994. Only upon subsequent prodding by Bell Atlantic the ensuing August did the Commission, in September, initiate a pleading cycle on the proposed amendment.[34] No party opposed Bell Atlantic's amendment; yet, to date, to BellSouth's knowledge, Bell Atlantic's amendment still hangs in limbo.[35]

---

[34] Public Notice, CC Docket 88-1 Phase I, DA 94-973 (Sept. 2, 1994).

[35] US West filed comments in the Bell Atlantic proceeding reciting its substantially similar experience in amending its ONA plan. See US West Comments, CC Docket 88-2 Phase I, filed Sept. 15, 1994.

While the purpose of the ONA amendment requirement is to make it more difficult for BOCs to engage in access discrimination through the public notice and waiting period provisions of the requirement, the Commission needs to ensure that the BOCs are not unfairly disadvantaged through unwarranted procedural and regulatory delays.

D. Reporting Requirement

In addition to imposing an assortment of unbundling and nondiscrimination obligations on the BOCs, the Commission also imposed annual and semi-annual reporting requirements to allow the Commission and others to monitor the BOCs' adherence to those obligations as well as to provide notice to ESPs of the BOCs' deployment plans for desirable ONA services. The reports provide information useful to the ESP community that can help them plan their own service offerings as well as follow the BOCs' service development activities. These reporting requirements thereby operate as an additional effective check on the BOCs' ability to pursue any discriminatory deployment program.

* * * * *

In short, the Commission's existing ONA requirements provide effective mechanisms to achieve both aspects of its ONA policy initiative. Where the BOCs are themselves offering enhanced services, the ONA requirements provide an effective check on the BOC's ability to favor their services over those of another provider. Separately, the ONA requirements, supplemented by developments in other proceedings, provide ESPs a reasonable opportunity to "pick and choose" or otherwise obtain unbundled services they need to develop their own services. Thus, existing requirements, absent "fundamental unbundling", are adequate to prevent the potential for "access discrimination" with which the Ninth Circuit was concerned.

III. The Three "Significant Instances Of Discriminatory Behavior" "Found" By The Georgia PSC And Recited By The Ninth Circuit Were Not Instances Of Discrimination At All; Therefore, The Georgia MemoryCall Decision Cannot Be Properly Cited As Evidence Of Competitive Abuse

No doubt, many of the BOCs' opponents in this proceeding will cite the Georgia PSC's "findings" of competitive abuses by BellSouth in its introduction of MemoryCall service[36] as "evidence" of past misbehavior by the BOCs and as grounds for denying any structural integration opportunities in the future. Those who do so,

[36] See, In the Matter of the Commission's Investigation into Southern Bell Telephone and Telegraph Company's Provision of MemoryCall Service, Docket No. 4000-U (Ga. PSC, June 4, 1991), ("Georgia MemoryCall Order"). BellSouth has previously provided the Commission with a copy of the entire record of the Georgia proceeding, including hearing transcripts, as a prelude to BellSouth's petition for preemption of the Georgia MemoryCall Order, which had frozen BellSouth's sale of MemoryCall service. As a result of that petition, the Commission did, in fact, preempt the Georgia PSC's order, Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, Memorandum Opinion and Order, FCC 92-18 (released Feb. 14, 1992) ("MemoryCall Preemption Order"), and the preemption decision was upheld on appeal, Georgia PSC v. FCC, No. 92-8257, 1993 U.S. App. LEXIS 24458 (11th Cir., Sept. 22, 1993) (per curiam).

however, will do so in error. The truth is that the MemoryCall decision provides no indication of actual competitive abuses by BellSouth.

As misdirected as that decision was, it is unfortunate that the Ninth Circuit gave it new life by referring to it in the California III decision. It would be even more unfortunate for the Commission, having opened the door to such discussion, to hear only one characterization of the Georgia MemoryCall Order. Thus, BellSouth takes this opportunity to provide greater insights to the MemoryCall decision than the Commission is likely to receive from competitors.

The Ninth Circuit referred to three "findings" by the Georgia PSC of "significant instances of discriminatory behavior by BellSouth."[37] The instances identified were: (1) "technical barriers" allegedly raised by BellSouth so that "competitors to MemoryCall could not use the local network, except to provide a service significantly inferior to MemoryCall;"[38] (2) BellSouth's refusal to permit nonaffiliated ESPs to collocate their equipment in BellSouth's central offices, "thereby perpetuating a distinction in product quality and price that disadvantages

---

[37] California III, 39 F.3d at 929.

[38] Georgia MemoryCall Order, at 27.

competitors to MemoryCall;"[39] and (3) the "possibility"[40] that BellSouth had "manipulated development of the local network, especially the timing of unbundling of certain network features . . . in order to maximize its competitive advantage."[41] As shown below, none of these instances constituted discrimination or abuse of monopoly position by BellSouth.[42]

A. The "Technical Barriers" Issue

Contrary to the mischaracterization by the Georgia PSC repeated by the Ninth Circuit, BellSouth did not erect technical barriers to other ESPs' or voice messaging providers' use of the local network. In fact, BellSouth went beyond any existing legal or regulatory obligation, state or federal, to enhance its competitors' connections to

---

[39] Georgia MemoryCall Order, at 28.

[40] Compare the hedging language used by the Georgia PSC on this issue, Georgia MemoryCall Order, at 28 ("evidence suggests the possibility that [BellSouth] has manipulated development . . .") (emphasis added), with subsequent interpretations or characterizations of this alleged finding, e.g., California III, 39 F.3d at 929 ("The Georgia PSC found . . . BellSouth had manipulated the development . . .") (emphasis added). Nonetheless, BellSouth will address this alleged instance of discrimination with the other two.

[41] Georgia MemoryCall Order, at 28.

[42] Some, of course, are likely to argue that BellSouth's explication herein is nothing more than a collateral attack on a past decision. That is not BellSouth's purpose. The purpose is to provide the Commission an appropriate framework for distinguishing the actual behavior exhibited by BellSouth in its introduction of MemoryCall service from the characterization of that behavior by the Georgia PSC.

the local network to allow their services to remain competitive with BellSouth's offering.

BellSouth obtained all known necessary regulatory approvals before introducing MemoryCall service. BellSouth filed its CEI Plan for voice messaging services in March 1988, and this Commission approved the plan in December of that year.[43]

BellSouth's tariff for the new or newly unbundled underlying network features was filed in Georgia the following year. By an order released April 17, 1990, the Georgia PSC allowed the tariff to go into effect for a one-year trial in the Atlanta area, concluding that "it is in the best interest of the customers who desire to offer voice messaging or other information services to have the option of subscribing to the special calling features."[44]

---

[43] BellSouth Plan for Comparably Efficient Interconnection for Voice Messaging Services, 3 FCC Rcd 7284 (1988).

[44] Southern Bell Telephone Company's Proposed Tariff Revisions for Authority to Introduce an Experimental Tariff for a Group of New Optional Network Services and Bi-directional Usage Rate Service, Docket No. 3896-U (released April 17, 1990), at 4. The delay in tariff approval was due to two principal controversies: BellSouth's original proposal to require all purchasers of the special calling features, including its own MemoryCall operation, to utilize two-way measured usage access arrangements (which the PSC rejected in this order) and the PSC's belief, notwithstanding the FCC's view in the pre-California I era, that BellSouth should file tariffs for MemoryCall service. This order approving BellSouth's tariff makes no mention of "technical barriers" or other forms of discrimination against competing voice messaging providers. To the contrary, it acknowledges that BellSouth's tariff filing would present them "options".

BellSouth thus satisfied its obligation to make the same network capabilities that it uses in offering MemoryCall service available to others, at the same time, and at the same prices, and began offering MemoryCall service in Atlanta following that decision.

Notwithstanding that BellSouth had complied with all known requirements for introducing its service in a nondiscriminatory fashion, telemessaging service providers began making informal complaints to the Georgia commission. The gravamen of these complaints was that two call forwarding features useful to customers of voice messaging services would work with the network service architecture utilized by MemoryCall service, but would not work in all switch types with the network architecture the incumbents utilized.

Telemessaging providers typically subscribed to direct inward dial (DID) trunks to receive incoming calls for their customers. Under this arrangement, customers would forward their calls to a specific telephone number assigned to them by the telemessaging provider from its block of DID numbers. When incoming calls arrived on a number assigned to a particular customer, the telemessaging provider would know the customer on whose behalf it was receiving a call and could tailor its greeting accordingly or have the call directed to an appropriate mailbox. This arrangement worked satisfactorily in all switch types with the pre-existing Call Forwarding-Variable feature.

In contrast, MemoryCall service utilized an architecture based on multiline hunt groups and a new feature known as Simplified Message Desk Interface, or SMDI. With SMDI, a messaging service provider did not need to have dedicated DID numbers associated with each of its customers because a customer's telephone number would be delivered to the messaging service provider with the incoming call, regardless of the line of the hunt group on which the call terminated. Not coincidentally, this SMDI feature was among those that had been requested by the telemessaging industry's trade organization during the course of development of the BOCs' original ONA plans.

As the record of the Georgia proceeding reflects, BellSouth included in its tariff of underlying network services two additional features that had been requested by the telemessaging industry and that MemoryCall intended to use -- Call Forwarding - Busy Line (CF-BL) and Call Forwarding - Don't Answer (CF-DA). The concern to the incumbent service provider was that neither CF-BL nor CF-DA would operate in a 1AESS switch to forward calls to another switch. Further, CF-DA would not forward to a DID trunk even within the same 1AESS switch. Thus, the utility of these features to ESPs with DID architectures was limited with respect to customers served by a 1AESS switch.

Notwithstanding that BellSouth had no obligation under this Commission's CEI requirements or under any previously articulated policy or requirement of the Georgia commission, BellSouth was already pursuing a solution of "fix" to the foregoing situation with the vendor of the 1AESS before the Georgia proceeding was initiated. In fact, negotiations with the vendor had begun as early as second quarter of 1989. During feature development, the vendor encountered a major software defect in the pre-existing Call Forward - Busy/Don't Answer program, which delayed initial availability of the fix until December, 1990, at which time deployment of the fix began. Further, as a result of negotiations regarding BellSouth's dissatisfaction with the development delay, the vendor committed to support an expedited deployment of this switch modification. BellSouth was thus able to reduce a typical 18 month deployment cycle to 7 months in Atlanta.

In light of the foregoing, the Georgia PSC's reliance on testimony that the desired capability "existed"[45] before BellSouth decided to introduce MemoryCall service was misguided. Until BellSouth undertook pursuit of this solution, the capability was not available to anyone in spite of its theoretical feasibility. In fact, as a result of its development efforts, BellSouth was the first local

---

[45] Georgia Memory Call Order, at 31.

exchange carrier in the country to implement the technical solution in the 1AESS.

The Georgia PSC similarly misinterpreted testimony of prior requests for this functionality as evidence of demand sufficient to warrant its earlier deployment. No evidence of market demand was ever adduced to support that inference. In fact, by the time of the Georgia proceeding, over 1,000 digital switches in BellSouth's service territory already were equipped to provide CF-BL and CF-DA on both an inter- and intraoffice basis to customers of messaging service providers using DID access arrangements. As the Georgia record reflected, however, BellSouth averaged selling on the order of only one to two CF-BL and CF-DA features per month on a regionwide basis during the 15 months prior to the Georgia hearings.[46]

Additionally, BellSouth's pursuit of this solution was not without significant cost. Specifically, BellSouth spent $1,100,000 for its vendor to develop the upgrade to its 1AESS offices,[47] and another $500,000 to deploy the upgrade, in response to the insistence of the incumbent messaging service providers. As just noted, this expenditure was incurred in the absence of any cognizable actual market demand for the capability.

---

[46] Georgia MemoryCall Proceeding, Hearing Transcript, at 506.

[47] Id. at 591.

That this "technical barrier" was nothing more than a red herring thrown into the Georgia proceeding is confirmed by market experience since the 1AESS upgrade was completed. Having spent over one and a half million dollars for this upgrade, BellSouth currently generates only about $12,000 annually in revenue from the sale of CF-BL and CF-DA features for non-MemoryCall related use. This experience justifies BellSouth's earlier caution in committing over a million dollars to have its vendor develop the 1AESS upgrade.

BellSouth's experience also confirms the validity of the Commission's ONA service selection criteria. Those criteria rightly require the unbundling or offering of network features only when it is both technically feasible and economically rational to do so. As demonstrated by the MemoryCall case, service development obligations based merely on bald requests, desires, or other unsubstantiated "demands", or on regulatory fiat can lead to economic dislocation and waste and to potentially stranded investment, with no offsetting public benefits.

Indeed, the imprudence and impracticality of the Georgia PSC's expectations with respect to BellSouth's introduction of MemoryCall service is evident when the PSC's reasoning is taken to its logical conclusion. By the rationale of the Georgia MemoryCall Order with respect to the "technical barriers" claim, BellSouth would be under an obligation to upgrade any technology different from that used by its own enhanced service operation, regardless of the costs or absence of market demand. Moreover, this upgrade would be required to bring the different technology to the same capability level as that used by BellSouth's service (and otherwise available to anyone else who chooses to use it), before the latter technology could be used to deliver innovative services to customers. Clearly, this approach to service deployment stifles new service innovation, encourages the uneconomic deployment of network capabilities, and perpetuates older and different technologies simply for the purpose of coddling incumbent competitors.[48] Subjecting all technologies to such a commonality requirement on a broader scale would sharply reduce economic incentives to upgrade the public telecommunications infrastructure.

---

[48] This lapse in the Georgia PSC's reasoning is perhaps best illustrated by applying it to other switch types. For example, much was made in the Georgia proceeding of the fact that a relatively high proportion of the offices in Atlanta in which MemoryCall service was available were 1AESS switches. What the Georgia PSC and the incumbent service providers ignored was that there were also 15 additional offices in the Atlanta local calling area where MemoryCall service was not readily available due to technical limitations. Thus, while BellSouth implemented the 1AESS fix to permit incumbent messaging service providers using DID trunks to have uniform service capability in 100% of the switches in the Atlanta area, MemoryCall service was limited to only 76% of the switches. By the Georgia PSC's logic, sales of messaging services by providers using DID arrangements should have been frozen until the features used by MemoryCall service could also be made available in 100% of the switches.

In sum, the "technical barriers" claim was and continues to be a red herring. BellSouth met all known regulatory obligations to which it was subject, including the tariffing of underlying capabilities which the Georgia PSC acknowledged provided "options" to other messaging service providers. BellSouth also spent $1.6 million to respond to an unsubstantiated and still undemonstrated claim of need, and did so even though during much of that time BellSouth's own sale of MemoryCall service was frozen by the Georgia PSC's order. Yet, rather than crediting BellSouth for having developed and offered the requested features despite the absence of demonstrated demand, the Georgia PSC characterized BellSouth's decision to upgrade the 1AESS switches as a "monopoly abuse." To the contrary, it is BellSouth that was and continues to be abused by the Georgia PSC's MemoryCall decision.

B. <u>The "Collocation" Issue</u>

The Georgia PSC's determination that BellSouth had discriminated against its potential competitors by not permitting them to collocate in BellSouth's central offices was equally flawed.

First, the <u>Georgia MemoryCall Order</u> selectively relied on only a portion of the testimony of the PSC's own staff witness to conclude erroneously that collocation of MemoryCall equipment in the central office gave MemoryCall service a cost advantage because "it eliminate[d] the need for a local transport link to provide the service."[49] The decision conveniently failed to acknowledge that in the very next line of testimony, the witness corrected his earlier statements.[50] The order also ignored testimony from BellSouth's witness corroborating the corrected testimony of the staff witness.[51] On this basis alone, the Georgia MemoryCall Order is defective and cannot support a

---

[49] Georgia MemoryCall Order, at 30, citing to the Hearing Transcript at p. 71, lines 4-23, and p. 185, lines 13-23.

[50] Hearing Transcript at p. 185, line 24 through p.186, line 7:

> I understand but it's not reflected in my testimony, that for that, if you will, [collocation] advantage, Southern Bell does incorporate in their cost of providing MemoryCall service a two-mile rule which was changed per some FCC proceedings on ONA in 1989, to give some recognition to the fact that that is a valuable asset to be able to include that hardware within the Southern Bell central office, and have applied those charges as if that hardware was located within a two-mile region or zone of the serving central office.

(emphasis added).

[51] Transcript at p. 502, lines 13 - 17:

> [A]s I said a minute ago, we pay in some cases, if the loop is distance sensitive, we pay more than a TAS [telephone answering service] would, as long as they're located less than two miles from the central office, and we would pay the same thing they would located more than that.

characterization of BellSouth's collocation policy as a discriminatory pricing practice.

Nor is the "finding" of asserted differences in quality of voice messaging service resulting from collocation sufficiently supported to sustain a characterization of discrimination by BellSouth. As above, the only support cited for this finding was the staff witness's speculative and conclusory assertion, without further elucidation, that collocation, in and of itself, enabled BellSouth to provide a higher quality voice mail service.[52] There was no evidence, however, that collocation had anything to do with the quality of the voice messaging service.

Even if the issue is viewed in terms of quality of network services, however, BellSouth gained no service quality advantage by not permitting competitors to collocate in its central offices. BellSouth's compliance with this Commission's CEI requirements mandates that the technical characteristics of the basic services provided by BellSouth

---

[52] Transcript at p. 71:

> [BellSouth] places its voice mail equipment (including hardware) within its central offices, thereby enabling [it] to provide a higher quality voice mail service. . . . TAS Bureaus must place their voice mail equipment on their business premises. This reduces the quality of the voice mail . . . . If [BellSouth] granted . . . requests [for collocation] the voice mail quality distinction would be eliminated.

to other ESPs be equal to those used by BellSouth's own enhanced service. This CEI parameter was satisfied when BellSouth offered its competitors the same basic service connections and features as used by MemoryCall service. Moreover, there was never any claim, much less a finding, in the Georgia proceeding that the services to which BellSouth's competitors <u>did</u> subscribe were of deficient quality.

The validity of the Georgia PSC's reliance on the collocation issue as grounds for a finding of discrimination is further undermined by the fact that only a very small percentage of BellSouth's MemoryCall equipment is collocated with the customer's serving wire center. Due to MemoryCall's use of the SMDI access arrangements, BellSouth uses a centralized voice messaging platform. Because of the intraoffice limitations of SMDI, however, MemoryCall service must purchase direct connections between each host office it wishes to serve and the location of its voice messaging platforms. In the case of Atlanta, that amounts to over 45 multiline hunt group/SMDI arrangements. These circuits are physically and technically identical to, and subject to the same chances of cable cuts or other outside plant disruptions, as those used by any other customer. The "collocation issue" is therefore also a red herring.

Moreover, the collocation issue has already been beaten to death. This Commission has consistently held[53] that its "two-mile, price parity rule" obviates the need for a competing ESP to have a physical presence in the BOCs' central offices.[54] Additionally, the Georgia PSC, in an order subsequent to the Georgia MemoryCall Order,

[53] See, e.g., Computer III, 104 FCC2d at 1037, ¶ 151; BOC ONA Order, 4 FCC Rcd 1, at ¶ 181-83. Even where this Commission initially adopted a mandatory physical collocation policy in the Expanded Interconnection proceeding, it recognized that such a requirement was not necessary to achieve technical comparability between a LEC's and its competitors' enhanced services:

> We found [in the Computer III and Open Network Architecture proceedings] that voluntary BOC use of price parity rules, a form of virtual collocation, fully addressed the competitive needs demonstrated by enhanced service providers. . . . [T]he enhanced service equipment at issue in Computer III could readily be located outside the LEC central office and achieve technical comparability with LEC enhanced service equipment located inside the central office.

Expanded Interconnection With Local Telephone Company Facilities, 7 FCC Rcd 7369, at n.93 (1992), recon., 8 FCC Rcd 127 (1992), vacated in part and remanded sub nom. Bell Atlantic v. FCC, 24 F.3d 1441 (D.C. Cir. 1994).

[54] This probably explains why the Commission, when alluding in the Notice to the Georgia PSC's decision, refrained from acknowledging that the collocation issue was among those addressed in that decision. See, Notice at ¶ 38.